IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.81 Of 2000.

Date of decision: July 16th, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Prittam Singh and another. ..... Respondents.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. Ashutosh Burathoki Addl. Advocate General.

For the respondents: Mr. Ramakant Sharma, Advocate.

Surinder Singh, J (oral):

The respondents were sent up for trial, in the court of Sub Divisional Judicial Magistrate, Nalagarh, District Solan, H.P., for the offences under Sections 379 and 120-B of the Indian Penal Code, Sections 41 and 42 of the Indian Forest Act read with Sections 4 and 14 of the Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act, 1981, (in short the Act) for allegedly transporting **321** resin tins, without permit.

In brief, the prosecution case is that on 27.7.1994, at about 5.30 a.m., Inspector/ S.H.O. Gurmeet Singh was on patrolling duty alongwith other police party. He intercepted the Truck No.HP-12-2055 being driven by Prittam Singh respondent and Baldev Raj respondent sitting besides him and

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Whether reporters of local Papers may be allowed to see the judgment? Yes .

discovered that the resin of above quantity was being transported. A Rukka Ext.PW10/A was sent to the Police Station, on the basis of which FIR Ext.PW10/B was registered. Police prepared site plan Ext.PW12/A. The case property alongwith vehicle in question were seized vide memos Exts.PW1/A and B. On pointing out of the respondents the place from where the resin tins were loaded were shown and memos Exts.PW7/A and B were prepared. The documents of the vehicle in question were taken into possession and after recording the statement of the witnesses under Section 161 of the Code of Criminal Procedure, challan was put up in the court for trial. The learned trial court on the completion of the trial, held that no offence under Section 379 of the Indian Penal Code was made out, however, it stood established on the record that the resin was being transported by the respondents in the truck, but the complaint was not filed by the duly authorised person, therefore, in view of the bar under Section 16 of the Act, the court cannot take the cognizance.

Against the impugned judgment of acquittal, the instant appeal has been filed. The leave to appeal was granted on 3.3.2000 and now the matter has been taken up for final hearing.

Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant has vehemently argued that once it has been proved that the respondents were transporting the resin without any valid permit, the trial court ought to have convicted the accused under Section 41 and 42 of the Indian

Forest Act. Since it was not done, therefore, the impugned judgment is unsustainable.

On the other hand, Mr. Ramakant Sharma, learned counsel for the respondents has supported the judgment and submitted that there was no error committed by the trial court, while conducting the said case, and it is based on the sound reasoning.

I have given by thoughtful consideration to the rival contentions of the parties and examined the evidence on record.

It is established on record, as revealed by PW12 Gurmeet Singh, SDOP, PW1 ASI Tirlochan Dutt, PW2 Shyam Lal, Head Constable, that the respondents were transporting 321 resin tins at the relevant time.

Section 4 of the Act [Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act, 1981,] says as under:-

"4. On and after the commencement of this Act,-

[Restrictions on sale, and purchase of resin etc.]

(a) **no person shall tap resin or manufacture any resin product or export any resin or resin products, unless he is registered under and in accordance with Section 10;**

(b) **no person shall sell resin to any person other than the State Government or an authorised officer;**

(c) **no person other than the State Government or authorised officer shall purchase resin from any tapper/owner of resin;**

(d) **no person other than the State Government or an authorised officer shall transport resin except in the following cases:-**

(i) where he being a tapper of resin transports it to the resin depot specified for the area where the resin is tapped; or

(ii) where he transports it on behalf of the State Government or an authorised officer;

(e) no person other than the State Government or an authorised officer shall transport resin products manufactured in a unit to any place outside that unit without a permit issued in that behalf by such authority, in such manner and subject to such terms and conditions as may be prescribed."

Section 2(e) defines the "resin products", which includes resin. The breach of the above section is punishable under Section 14 of the Act ibid, which provides for the penalty and Section 16 thereof prohibits the cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a Forest Officer not below the rank of a Forest Ranger or by such other officer as may be empowered by general or special order of the State Government in that behalf.

In the present case, admittedly no complaint in writing has been made to the court by the concerned public servant as per the provisions of Section 16 of the Act. Though the cognizance was taken by the Judicial Magistrate, below, on the basis of police report submitted to him under Section 173 of the Code of Criminal Procedure, but such cognizance under the Act was, therefore bad and the entire trial of the respondents stood vitiated including Sections 41 and 42 of the Indian Forest Act. The transporting of the resin is governed under the Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act, 1981, which provides the penalty for any breach committed under the Act. The alleged offences are committed in the course of same transaction and a composite challan, in respect of all the offences including

Section 379 of the Indian Penal Code and Sections 41 and 42 of the Indian forest Act, was presented by the police under Section 173 of the Code of Criminal Procedure, before the trial court. Such a challan cannot be split up, therefore, when the trial court was not competent to take the cognizance under Section 16 of the Act, then it cannot be ventilated that the respondents should have been convicted and sentenced under Sections 41 and 42 of the Indian Forest Act, instead of Section 14 of the Act.

There is nothing on record that S.D.O.(P) Shri Gurmeet Singh was a duly authorised person to present the challan/ complaint under the Act. In **State of H.P**. v. **Sultan Mohamad** [**1998(1) C.L.J.262 (H.P.],** it was held that the prosecution of the accused was not maintainable in absence of special or general notification to launch prosecution by the police under the Act in such a case.

On the examination of the facts on record, the prosecution has also failed to prove the charge under Section 379 of the Indian Penal Code, therefore, the acquittal was rightly recorded by the trial court, vis-à-vis the fact that no cognizance could have been taken by the trial court in absence of a written complaint by a duly authorised person as envisaged under Section16 of the Act. Accordingly, the impugned judgment is upheld and the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 16th, 2007. **(Surinder Singh)**
(PDS) **Judge**.